

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

IN RE:)
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)
EASTERN LIVESTOCK CO., LLC,) Case No. 10-93904-BHL-11
)
)
Debtor.)

**MOTION TO APPROVE COMPROMISE AND SETTLEMENT
WITH STEPHEN N. KITCHENS D/B/A BUCKHORN CATTLE**

Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, James A. Knauer, as Chapter 11 trustee (“Trustee”) for the bankruptcy estate (“Estate”) of Eastern Livestock Co., LLC (“Debtor” or “ELC”), by counsel, hereby files this motion (“Settlement Motion”) requesting the Court’s approval of a compromise and settlement of claims between the Trustee and Stephen N. Kitchens, individually and doing business as Buckhorn Cattle (“Kitchens”), pursuant to the terms and conditions set forth in the Settlement Agreement and Mutual Release substantially in the form attached hereto as Exhibit A (“Settlement Agreement”). In support of this Settlement Motion, the Trustee respectfully represents the following:

Introduction and Background

1. Certain petitioning creditors commenced the above-captioned chapter 11 case (the “Chapter 11 Case”) against the Debtor on December 6, 2010, by filing an involuntary petition for relief under chapter 11 of title 11 of the United States Code. This Court entered the Order for Relief in An Involuntary Case and Order to Complete Filing [Doc. No. 110] on December 28, 2010.

2. On December 27, 2010, the Court entered the Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee [Doc. No. 102] pursuant to 11 U.S.C. § 1104.

3. On July 23, 2012, the Trustee filed the Trustee's Chapter 11 Plan of Liquidation [Doc. No. 1255] and the First Amended Chapter 11 Plan of Liquidation on October 26, 2012 [Doc. No. 1490] ("Plan"). The Court entered an Order on December 12, 2012 [Doc. No. 1644] confirming the Plan.

4. On May 1, 2013, the Trustee commenced Adversary Proceeding No. 13-59021 against Kitchens , and filed his Amended Complaint on July 10, 2014 ("Adversary Proceeding") seeking to enforce payment pursuant to a settlement agreement and damages for breach of a pasture agreement between ELC and Kitchens. On May 13, 2016, Kitchens filed his Answer and Counterclaims for setoff damages.

The Settlement

5. The following is a summary of the key provisions of the Settlement Agreement. Parties should refer to the Settlement Agreement for a full explanation of the proposed settlement.

6. Pursuant to the Settlement Agreement, Kitchens shall pay the Trustee for the benefit of the Estate the total sum of \$11,600.00 (the "Settlement Amount"). The Settlement Amount shall be paid in one lump sum payment. The Trustee has already received payment of the Settlement Amount and is holding it in trust. The parties have also agreed to release each other from all claims or causes of action known or unknown, direct or indirect, related to the Chapter 11 Case and the Adversary Proceeding.

7. In the exercise of his sound business judgment, the Trustee has determined that a settlement of the Adversary Proceeding in the Settlement Amount is in the best interests of the Debtor's estate and its creditors.

8. The Trustee requests that the Court approve the compromise and settlement of claims between the Trustee and Scotts Hill pursuant to the terms and conditions set forth in the Settlement Agreement. The Trustee is seeking court approval of the Settlement Agreement because the Settlement Amount is less than the sum of the Estimated Net Exposure as approved by the Preference Protocol Order.

9. In accordance with the terms of the Plan, the Settlement Amount shall become part of the Collateral Fund (as that term is defined in the Estate's confirmed Chapter 11 Plan).

10. The Trustee requests that the Court approve the compromise and settlement of claims between the Trustee and Kitchens pursuant to the terms and conditions set forth in the Settlement Agreement.

Basis for Relief

11. Pursuant to Bankruptcy Rule 9019(a), this Court has authority to approve a compromise or settlement after notice and opportunity for a hearing. Under Bankruptcy Rule 9019, a bankruptcy court should approve a proposed compromise if it is fair and equitable and in the best interests of the estate. *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968); *In re Doctors Hosp. of Hyde Park, Inc.*, 474 F.3d 421, 426 (7th Cir. 2007). The Seventh Circuit has offered the following guidance to courts in making such determinations:

The linchpin of the “best interests of the estate” test is a comparison of the value of the settlement with the probable costs and benefits of litigating. Among the factors the court considers are the litigation’s probability of success, complexity, expense, inconvenience, and delay, “including the possibility that disapproving the settlement will cause wasting of assets.”

In re Doctors Hosp. of Hyde Park, Inc., 474 F.3d at 426 (citations omitted).

12. The Trustee believes that the compromise and settlement reflected in the proposed Settlement Agreement is fair and equitable and in the best interests of the Estate. It is the Trustee's view that the Estate would incur significant costs and expenses in litigating the claims against Kitchens.

13. If no objections to this Settlement Motion are filed, the Parties request that the Court enter an order approving the Settlement Agreement. If any objections to this Settlement Motion are filed, the parties request that this Settlement Motion and any timely filed objection be scheduled for hearing by the Court on the earliest date that is available and convenient to the Court

WHEREFORE, the Trustee respectfully requests that the Court enter an order approving the Settlement Agreement attached hereto as Exhibit "A" and grant the Trustee all other just and proper relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2016, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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I further certify that on July 26, 2016, a copy of the foregoing pleading was served via electronic mail transmission on the following:

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/s/ Amanda D. Stafford
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